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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

506474-0008

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on August 31 2006

Signature Michele B. Hsieh

Typed or printed name Michele B. Hsieh

Application Number

10/779,916

Filed

February 17, 2004

First Named Inventor

William C. Cortner, Jr.

Art Unit

3644

Examiner

Elizabeth Shaw

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.
☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 25,717
Registration number

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

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August 31, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**ATTACHMENT TO PRE-APPEAL BRIEF
REQUEST FOR REVIEW**

Inventor : William C. Cortner Jr.
Serial No. : 10/779,916
Filing Date : February 17, 2004
Title : INSECTICIDE APPLICATOR AND METHOD FOR
LIVESTOCK

Group/Art Unit : 3644
Examiner : Elizabeth Anne Shaw
Confirmation No. : 9008
Docket No. : 506474-0008

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pre-Appeal Brief Request for Review is based upon the following reasons:

1. The Examiner erroneously stated in the rejection mailed June 1, 2006 at page 2, second paragraph, line 5 that the prior art Cortner, Jr. reference disclosed an animal insecticide applicator comprising a bag and a "first and second tie rope 70." FIG. 10 of the Cortner, Jr. reference clearly shows only a single tie rope 70. This error was brought to the Examiner's attention in the Response filed June 12, 2006 at p. 4, first full paragraph.
2. The Examiner's statement at page 3, lines 12-14 of the final rejection mailed June 1, 2006 that the rope 70 of the Cortner, Jr. reference is secured to the bag in a desired longitudinal position does not take into consideration the limitation of independent claims 1 and 6 which require that **each** of the first and second tie ropes be secured to and **extend partially along one side** of the bag. The single rope 70 of the Cortner, Jr. reference does not extend along either side of the bag. This error was brought to the Examiner's attention in the Amendment filed June 12, 2006 at page 4, next to the last paragraph.

3. The Examiner erred in failing to follow the well established principle of claim differentiation by equating the limitation of claim 3 to the teachings of the prior art. See Examiner's advisory action mailed June 30, 2006, paragraph 11, continuation sheet. See also final rejection mailed June 1, 2006, page 3, first full paragraph, lines 2-5. As pointed out on page 4 of Applicant's Amendment filed June 12, 2006 (lines 7-17) the fact that claim 3 states that the first and second ropes called for by claim 1 can be formed into one continuous length of rope does not result in removal of the clear and specific limitation of the independent claim that there must be first and second tie ropes each of which extend **through the length** of the tubular support. The claims must be read in light of the specification which clearly show this construction. (See FIG. 3 and description at paragraph 21). If two ropes were present in the Cortner, Jr. reference there would be four pieces of rope extending out the ends of the tubular support. This is clearly not the case.
4. The Examiner has ignored the significant advantages attributable to the novel configuration and method specified in the independent claims. See for example paragraph 23 of the specification, last sentence. The requirement of the claims that there be two ropes each attached to one side of the bag and then extending through the tubular support in the opposite direction means that when the bag is hung from an overhead support the ropes cooperate with the tube to create two right angles. These right angles not only keep the bag from sliding off the ends of the tube but they also preclude the bag from migrating (bunching up) toward the center. Only through the use of the novel two rope cross-threading arrangement

specified by the independent claims and the advantages discussed in the specification achieved.